

ESTTA Tracking number: **ESTTA679962**Filing date: **06/24/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Poulsen Roser A/S
Granted to Date of previous extension	06/24/2015
Address	Kratbjerg 332 Fredensborg, DK-3480 DENMARK

Domestic Representative	James J. Saul Faegre Baker Daniels LLP 311 S. Wacker Drive Suite 4300 Chicago, IL 60606 UNITED STATES james.saul@faegrebd.com, katie.feiereisel@faegrebd.com Phone:(312) 356-5053
-------------------------	--

Applicant Information

Application No	86340084	Publication date	02/24/2015
Opposition Filing Date	06/24/2015	Opposition Period Ends	06/24/2015
Applicant	Capstone Plants, Inc. 201 Private Road 5180 Grand Saline, TX 75140 UNITED STATES		

Goods/Services Affected by OppositionClass 031. First Use: 2014/06/10 First Use In Commerce: 2014/06/10
All goods and services in the class are opposed, namely: Live plants**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2371399	Application Date	08/14/1996
Registration Date	07/25/2000	Foreign Priority Date	NONE
Word Mark	PARTY		

Design Mark	PARTY
Description of Mark	NONE
Goods/Services	Class 031. First use: First Use: 1996/12/01 First Use In Commerce: 1996/12/01 Live rose plants

U.S. Registration No.	2627358	Application Date	09/19/2000
Registration Date	10/01/2002	Foreign Priority Date	NONE
Word Mark	PATIOHIT		
Design Mark	PATIOHIT		
Description of Mark	NONE		
Goods/Services	Class 031. First use: First Use: 0 First Use In Commerce: 0 [Agricultural, horticultural, and forestry products, namely, unprocessed grains for eating and grains for agricultural purposes; live animals; fresh fruits and vegetables; seeds;] live plants and live flowers [; food stuffs for animals; and malt for brewing and distilling]		

Attachments	75150942#TMSN.png(bytes) 76130688#TMSN.png(bytes) Notice of Opposition - PATIO PARTY.pdf(199324 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/James J. Saul/
Name	James J. Saul
Date	06/24/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

POULSEN ROSER A/S,)	U.S. Trademark Application Serial No. 86/340,084
)	
Opposer,)	Mark: PATIO PARTY
)	
v.)	Opposition No.: _____
)	
CAPSTONE PLANTS, INC. d/b/a)	
J. BERRY NURSERY,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Poulsen Roser A/S, a Danish aktieselskab (stock-based company), having a principal place of business at Kratbjerg 332, Fredensborg 3480, Denmark (“Opposer”), believes it will be damaged by the registration of the trademark PATIO PARTY that is the subject of U.S. Trademark Application Serial No. 86/340,084 (the “Application”) and hereby opposes registration of same. In support of its opposition, Opposer, by its attorneys, states as follows:

1. Opposer is a leading global breeder and developer of roses and clematis for both indoor and outdoor use. More than 50% of total global sales of potted roses are Poulsen Roses.
2. Opposer licenses the right to produce, market, and sell its roses and clematis to nurseries in more than 60 countries around the world. Every year, 30 million Poulsen roses and 2 million Poulsen clematis are produced under these licenses.
3. Among Opposer’s vast portfolio are the following incontestable trademarks registered with the United States Patent and Trademark Office (“USPTO”):

Trademark	Registration Number	Registration Date	Int'l Class	Goods & Services
PARTY	2,371,399	July 25, 2000	31	Live roses
PATIOHIT	2,627,358	October 1, 2002	31	Agricultural, horticultural, and forestry products, namely, unprocessed grains for eating and grains for agricultural purposes, live animals, fresh fruits and vegetables, seeds, live plants and live flowers; food stuffs for animals; and malt for brewing and distilling

(the “Marks”).

4. Poulsen and its licensees have continuously used the PARTY and PATIOHIT Marks in the United States in connection with Poulsen’s rose plants since at least as early as 1996.

5. Poulsen applies rigorous quality control obligations on the licensees that use its trademarks, including the PARTY and PATIOHIT Marks. Because of the high degree of control Poulsen exercises over its licensees’ use of the Marks, its licensees’ efforts with respect to the Marks inure to the benefit of Poulsen.

6. Poulsen and its U.S. licensees have invested heavily in developing the Marks through extensive marketing and advertising throughout the United States, and rose varieties sold under the PARTY and PATIOHIT Marks have realized tremendous commercial success. As a result of Poulsen’s incontestable federal registrations and Poulsen and its licensees’ extensive advertising, marketing and sales over many years, the Marks have become well-recognized by consumers throughout the United States as a single source of Poulsen’s high quality live rose plants.

7. On or about July 17, 2014, Capstone Plants, Inc. d/b/a J. Berry Nursery (“Applicant”) filed the Application with the USPTO.

8. Through the Application, Applicant seeks to register the trademark PATIO PARTY for live plants in International Class 31 (“Applicant’s Goods”). The Application states that Applicant first used the mark PATIO PARTY in the United States as of June 10, 2014.

9. On March 24, 2015, Opposer filed a request with the Trademark Trial and Appeal Board (“TTAB”) for an extension of time to oppose the Application. The TTAB granted Opposer’s request for an extension of time to oppose the Application on that same day.

10. There is no issue as to priority of use, because Opposer has used its PARTY and PATIOHIT Marks in the United States since at least as early as 1996. This use precedes the date of first use set forth in the Application.

First Ground for Opposition:
Likelihood of Confusion with the PARTY and PATIOHIT Marks

11. The PATIO PARTY mark set forth in the Application is confusingly similar to Opposer’s incontestable PARTY and PATIOHIT Marks.

12. Applicant’s Goods and the goods sold by Opposer under its PARTY and PATIOHIT Marks are closely related.

13. The conditions surrounding the marketing of the Applicant’s Goods and the goods sold by Opposer under its PARTY and PATIOHIT Marks are such that they could be encountered by the same purchasers under circumstances that could give rise to the mistaken belief that the goods come from a common source.

14. Applicant’s use of the PATIO PARTY mark in connection with Applicant’s Goods will damage Opposer because it is likely to cause confusion, mistake, or deception as to the source, origin, or sponsorship or approval of Applicant’s Goods, in that consumers are likely

to believe that Applicant's Goods are Opposer's goods, or are in some way legitimately connected with, licensed, or approved by Opposer.

15. Opposer believes that registration of the PATIO PARTY mark on the Principal Register in connection with Applicant's Goods would be inconsistent with Opposer's rights under the common law and the Trademark Act, and that such registration would damage Opposer.

Second Ground for Opposition:
Fraud on the United States Patent and Trademark Office

16. Though Applicant does not own a federal trademark registration for PATIO PARTY, Applicant is nevertheless using the statutory registration symbol—®—in connection with PATIO PARTY in its advertisements, as pictured below:



17. In fact, the specimen of use that Applicant submitted to the USPTO in connection with its application to register PATIO PARTY evidences fraudulent misuse of the statutory registration symbol:



18. Applicant has used the statutory registration symbol with the intent to deceive the purchasing public or others in the trade into believing that the PATIO PARTY mark is registered.

19. Therefore, the Application is not entitled to registration because Applicant's fraudulent misuse of the statutory registration symbol constitutes fraud on the purchasing public and on the United States Patent and Trademark Office.

WHEREFORE, Opposer Poulsen Roser A/S believes that it would be damaged by registration of the PATIO PARTY mark in connection with the Applicant's Goods and respectfully requests that application serial number 86/340,084 be rejected, that no registration be issued thereon, and that this opposition be sustained in favor of Opposer.

Respectfully submitted,

s/ James J. Saul
James J. Saul
Kathryn A. Feiereisel
FAEGRE BAKER DANIELS LLP
311 S. Wacker Drive, Suite 4300
Chicago, IL 60606
Tel: (312) 212-6500
Fax: (312) 212-6501
james.saul@faegrebd.com
katie.feiereisel@faegrebd.com

Attorneys for Plaintiff

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this notice is being filed with the Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, by using the ESTTA electronic filing system, this 24 day of June 2015.

s/ James J. Saul

James J. Saul

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing “Notice of Opposition” has been served on Applicant’s Attorney identified below via first class mail, on June 24, 2015.

Mr. C. Brandon Browning
Maynard, Cooper & Gale, PC
1901 Sixth Avenue North, Suite 2400
Birmingham, Alabama 35203

s/ James J. Saul

James J. Saul